

**EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
  
2. Authorization for this examiner's amendment was given in a telephone interview with Rodney Lacy, reg. no. 41,136 on June 3, 2010.
  
3. The specification has been amended as follows:
  - a. Page 7, line 3, add - non-transitory - after "types of".
  
4. The claims have been amended as follows:
  - a. Replace claim 8 to read as of the following,

In Claim 8,

8. (Currently Amended) A non-transitory computer accessible computer-readable storage medium having stored thereon executable instructions for managing a plurality of sources, said executable instructions capable of directing a processor to perform:

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selecting a type of empirical measurement of performance from a plurality of types of empirical measurement, wherein the type of empirical measurement is selected according to a comparison of a size of data to be obtained from at least one of a plurality of sources with a threshold size; selecting a download source in reference to the empirical measurements of the throughput speed of each of the plurality of sources; and initiating a download of data from a download source of the plurality of sources.

b. Replace claim 9 to read as of the following,

In Claim 9,

9. (Currently Amended) The non-transitory computer-accessible computer-readable storage medium of claim 8, wherein the throughput speed further comprises a download speed.

c. Replace claim 10 to read as of the following,

In Claim 10,

10. (Currently Amended) The non-transitory computer-accessible computer-readable storage medium of claim 8, wherein said instructions for selecting a type of empirical measurement further comprises an instruction capable of directing the processor to perform:  
measuring a throughput speed of each of the plurality of sources.

Replace claim 11 to read as of the following,

In Claim 11,

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11. (Currently Amended) The ~~computer non-transitory~~ computer-accessible computer-readable storage medium of claim 10, wherein said instructions for measuring further comprises instructions capable of directing the processor to perform for each of the plurality of sources:  
recording transmission time from the current time and date;  
initiating a transmission to a download source of the plurality of sources;  
receiving a response to the transmission from the source;  
recording the receipt time from the current date and time; and  
determining the throughput speed of the source from the difference between the receipt time and the transmission time.

d. Replace claim 19 to read as of the following,

In Claim 19,

19. (Currently Amended) The ~~computer non-transitory~~ computer-accessible computer-readable storage medium of claim 8, wherein the download source further comprises a source in a peer-to-peer network.

e. Replace claim 20 to read as of the following,

In Claim 20,

20. (Currently Amended) The ~~computer non-transitory~~ computer-accessible computer-readable storage medium of claim 8, wherein said instructions for selecting a type of empirical measurement further comprises instructions capable of directing the processor to perform:  
recording transmission time from the current time and date;  
initiating a transmission to a download source of the plurality of sources;  
receiving a response to the transmission from the source;  
recording the receipt time from the current date and time; and  
determining the round-trip timing of the download source from the difference between the receipt time of the response and the transmission time of the transmission.

f. Replace claim 25 to read as of the following,

In Claim 25,

25. (Currently Amended) A system for managing sources in a peer-to-peer network comprising:  
a hardware processor;  
software means operative on the processor for selecting a type of empirical measurement of a plurality of types of measurements of throughput speed of each of the plurality of sources, the type of empirical measurement selected according to a comparison of a size of data to be obtained from at least one of the plurality of sources with a threshold size;  
the software means including obtaine means to obtain an empirical measurement having the selected type, the empirical measurement comprising of a throughput speed of each of the plurality of sources from at least one third-party source;  
the software means selecting a download source in reference to the empirical measurements of the throughput speed having the selected type for each of the plurality of sources and the at least one third-party source; and  
a transmitter to initiate a download of data from the download source of the plurality of sources.

g. Replace claim 28 to read as of the following,

In Claim 28,

28. (Currently Amended) A computerized system comprising:  
a hardware processor;  
a determiner of empirical measurements of a throughput speed of each of a plurality of download peer-to-peer network sources, the empirical measurements having a type;  
the determiner operable to select a type of empirical measurement and to select an empirical measurement of a throughput speed having the selected type for each of the plurality of sources from at least one third-party source, the type of empirical measurement selected according to a comparison of a size of data to be obtained from at least one of the plurality of download peer-to-peer network sources with a threshold size;  
a selector of a download source in reference to the empirical measurement of the throughput speed of each of the plurality of peer-to-peer network sources and the at least one third-party source; and

a transmitter to initiate a download of data from the download source of the plurality of peer-to-peer network sources.

h. Replace claim 32 to read as of the following,

In Claim 32,

32. (Currently Amended) The ~~computer non-transitory computer-accessible computer-readable~~ storage medium of claim 8, wherein the threshold size is determined according to a communications bandwidth of a computer system initiating the download of data.

*Reason for Allowance*

5. The following is an examiner's statement of reasons for allowance: The reason for allowance is solely based on the decision of the participants of the pre-brief appeal conference mailed on 3/26/2010.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Lee whose telephone number is (571)272-3967. The examiner can normally be reached on 8 AM TO 5:30 PM Monday to Thursday and every other Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571) 272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information

Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip C Lee/

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